IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6785 OF 2004

Krishnakumar Bangera ..Petitioner

Versus

The Returning Officer,
Mogaveera Cooperative Bank
Limited and Ors. .. Respondents.

Mr.V.B.Rajure for petitioner
Mr.A.H.Palekar, A.G.P. for respondent Nos. 1, 2 and 4
Mr.S.V.Borkar for respondent No.3.

CORAM : A.M.KHANWILKAR, J.

DATE : AUGUST 27, 2004.

P.C.

1. Heard the learned Counsel appearing for parties. Rule. Rule made returnable forthwith by consent. Mr.Palekar, A.G.P. waives notice for respondent Nos. 1, 2 and 4 and Mr.Borkar for respondent No.3. As short question is involved, petition taken up for final disposal forthwith by consent.

2. The petitioner was member of Board of Directors of respondent No.3 society. It is not in dispute that proceedings under section 73FF read with section 78 of the Maharashtra Cooperative Societies Act were initiated against the petitioner, which culminated with the order of disqualification, declaring that the petitioner was disqualified being a defaulter; on account of which order under Section 73FF(1) came to be passed by the Additional Commissioner and Sub-Registrar on 8th January 2003. Now fresh elections have been notified for electing members of the Board of Directors to the respondent No.3

society. The petitioner intends to contest the said election and accordingly has filed his nomination. The Returning Officer has rejected the nomination on the ground that the petitioner has been declared to be defaulter and disqualified by order dated 8th January 2003, for which reason on account of section 73 FFF, he would be ineligible to contest in the ensuing election and for a period of two years from the date of disqualification. The rejection of petitioner's nomination form by the Returning officer was questioned before the appellate authority which in turn has dismissed the appeal preferred by the petitioner by the impugned judgement and order dated 13th August 2004 in Appeal No.ELN/191/2004. Ordinarily, in such situation efficacious remedy of election dispute is provided by the provisions of the Act. However, as the appeal has been decided by the Commissioner, Konkan Division, before whom such a dispute could be maintained, in view of the

exposition in case of Nanaji Gunaji Bhokre Vs. Commissioner, Amravati Division, reported in 1994 Mh.L.J. 1277, the petitioner has taken recourse to the remedy of Writ petition before this Court on the assertion that he has no efficacious remedy left to challenge the order passed by the authorities below on his nomination papers.

3. According to the petitioner, the Returning Officer as well as appellate authority has committed manifest error in rejecting nomination of the petitioner. It is the case of the petitioner that assuming that the disqualification order passed on 8th January 2003 has remained unchallenged and is binding on the petitioner, even so, there is no inhibition for the petitioner in contesting fresh election. Inasmuch as, the said disqualification is ascribable to provisions of section 73 FF(1)(i) being defaulter of respondent No.3 society and such disqualification is no disqualification for

contesting fresh elections. For, disqualification ascribable only to section 73 FF(1)(ii) and 73 FF(1)(iii), the candidate would be ineligible or disqualified to contest fresh elections for a specified period. This aspect, contends learned Counsel, has clearly been glossed over by the authorities below. Besides, it is contended that the basis on which the order is passed on 8th January 2003 is wholly unfounded because the concerned society viz., Mogaveera Coop.Bank Ltd. has issued a certificate as back as on 29th July 2002 that the petitioner was not liable to pay any amount and has repaid the entire loan instalment and interest on overdraft account for the relevant period. This certificate which is at page 41 of the paperbook has not been adverted to by the authority which passed the order on 8th January 2003. On the above submissions, Mr.Rajure contends that the orders passed by the authorities below are on the face of it erroneous and cannot be sustained.

4. On the other hand, learned Counsel for respondent No.3 submits that although the earlier disqualification order passed on 8th January 2003 concludes that the disqualification is referrable to provisions of Section 73 FF(1)(i)(d), even so, the order has been passed also because of the mis-management and breach of cooperative discipline committed by the petitioner which is ascribable to clause 73 FF 1(ii). The learned Counsel for respondent No.3 therefore, submits that in such case provisions of section 73FFF(1) will come into play for which reason, the conclusion reached by the Returning officer and confirmed by the appellate authority needs no interference.

5. Mr.Palekar, for respondent Nos.1, 2 and 4 submits that no fault can be found with the decision of the Returning Officer which has in substance followed the direction contained in the

order dated 8th January 2003 on account of which the petitioner stood disqualified to hold office of the member of Board of Directors of respondent No.3 Bank.

6. Having considered rival submissions, I have no hesitation in setting aside the order passed by the Returning Officer rejecting nomination of the petitioner as well as the order passed by the appellate authority confirming that view of the Returning Officer. To my mind, the conclusion reached by the returning officer as well as the appellate authority is manifestly wrong and cannot be said to be a cogent much less permissible reason for rejecting the nomination filed by the petitioner. This is so because, from the material on record, it is more than evident that the order as passed on 8th January 2003 is clearly on the basis of the alleged default committed by the petitioner in respect of loan amount and overdraft facility amount availed

from the Mogaveera Coop.Bank. Indeed, in that order, authority has reached a conclusion that the petitioner has failed to pay the requisite amounts. It is not necessary for this Court to examine the correctness of the submission of the petitioner that the view taken in the said order cannot be substantiated from the record especially in view of the certificate issued by the Bank dated 29th July 2002 to certify that the petitioner was not a defaulter and had repaid the loan instalments as well as the interest on the overdraft account. The fact remains that the order dated 8th January 2003 was passed on the basis of alleged default committed by the petitioner in respect of loan and overdraft facility acount availed from the Mogaveera Coop. Bank and which entails in disqualification ascribable to section 73FF (1)(i)(d). In fact, the said order dated January 8, 2003 also records this conclusion as can be discerned from the penultimate paragraphs of the said order. In

other words, the petitioner has been held to be a defaulter and, therefore, disqualified for being a member of committee at the relevant time under section 73FF (1)(i)(d) of the Act. It is not possible to accept the submission canvassed on behalf of the respondent No.3 that the said order dated 8th January 2003 also proceeds on the finding that the disqualification was under section 73FF(1)(ii) of the Act. There is nothing in the order, atleast, the discussion and the finding recorded by the authority, to buttress that position. Whereas, the order clearly records disqualification to be one only under section 73 FF (1)(i)(d) of the Act. Viewed in this perspective, the order is not ascribable to section 73FF(1)(ii) of the Act as is now suggested by the Counsel for respondent No.3. In fact, neither the Returning Officer nor the appellate authority have proceeded to reject the nomination of the petitioner on the basis that the said order visited the petitioner with

disqualification referrable to section 73FF(1)(ii). Whereas, both the authorities below have rejected the nomination on the solitary reason that the order dated 8th January 2003 will stare at the face of the petitioner and he would be, therefore, disqualified to participate in the fresh election by virtue of section 73FFF. This reason however, cannot be sustained either on facts or in law. On the other hand, as has been found earlier, if the disqualification is only under Section 73FF(1)(i)(d) in such case, Section 73FFF will have no application. For, Section 73FFF applies only where disqualification is under section 73FF (1)(ii) or 73FF(1)(iii), as is clear from the plain language of the said provision.

7. Accordingly, the basis on which the Returning Officer as well as the appellate authority has proceeded to reject the nomination preferred by the petitioner cannot be sustained

either on facts or in law. Hence this petition ought to succeed with directions to the Returning Officer to treat the nomination submitted by the petitioner as valid and to permit the petitioner to contest the ensuing election which are scheduled on 2nd September 2004. Petition is allowed in the aforesaid terms with no order as to costs.

8. Mr.Palekar for respondent Nos. 1, 2 and 4 submits that without waiting for copy of the order the Returning Officer will be advised to proceed on the basis of the order as pronounced in court. This assurance is accepted.

9. All concerned to act on an authenticated copy of this order.

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